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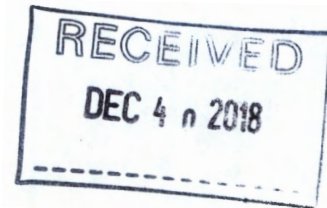


**Via Certified Mail –
Return Receipt Requested**

November 30, 2018

DEC 6 5 2018

Mr. Ron Davis, City Manager
Members of the City Council
City of Burbank
Burbank City Hall
275 East Olive Avenue
Burbank, CA 91510



Ms. Marnell Gibson, Public Works Director
City of Burbank - Public Works Department
150 North Third Street
Burbank, CA 91502

Re: Supplemental Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

STATUTORY NOTICE

This Supplemental Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 et seq., that River Watch alleges are occurring through the ownership and/or operation of the City of Burbank's sewer collection and outfall system.

River Watch hereby places the City of Burbank ("the City"), as owner of its sewer collection system and outfalls, on notice that following the expiration of sixty (60) days from the date of this Supplemental Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Los Angeles Region, Water Quality Control Plan ("Basin Plan"), as the result of violations of the City's National Pollution Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the City is in violation of the CWA by violating the terms of the City's NPDES permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the operations of the City in the region at issue in this Supplemental Notice is the Regional Water Quality Control Board, Los Angeles Region ("RWQCB-LA").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

The orders alleged to be violated are as follows:

NPDES Permit No. CA0055531 - Waste Discharge Requirements for the City of Burbank Water Reclamation Plant - River Watch identifies specific violations of the City's NPDES permit including raw sewage discharges. These alleged discharges are violations of the City's NPDES Permit, which states in Section III. Discharge Prohibitions:

- A. “Discharge of wastewater at a location different from that described in this Order is prohibited.
- B. The bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage courses is prohibited, except as allowed in Standard Provision I.G. of Attachment D, Standard Provisions.
- C. The Permittee shall not cause degradation of any water supply, except as consistent with State Water Board Resolution No. 68-16.”

NPDES Permit No. CAS004001 - Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (“MS4”), governing the municipal discharges of storm water and non-storm water by the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities (including the City) within the coastal watersheds of Los Angeles County. The MS4 states in relevant part:

“Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters [with specific exceptions]” (see Section III.A. “*Discharge Prohibitions*”).

“Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited”; and “Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance” (see Section V.A.1. and 2. “*Receiving Water Limitations*”).

2. The Activity Alleged to Constitute a Violation

River Watch contends that from June 13, 2013 (the date of the initial Notice of Violations) through November 30, 2018 (the date of this Supplemental Notice), the City has violated the Act as described in this Supplemental Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future. The location or locations of the various violations alleged in this Supplemental Notice are identified in records created and/or maintained by or for the City which relate to the ownership and operation of sewer collection system and outfalls as described in this Supplemental Notice.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

I. Sanitary Sewer Overflow Occurrences

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above ground from the collection system prior to reaching the City’s Water Reclamation Plant, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”)

Interactive Public SSO Reports and on the dates when no reports were filed with CIWQS by the City, all in violation of the CWA.

The City's aging sewer collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters including the Burbank Western Channel and the Los Angeles River. All of the waterways lead to the Pacific Ocean, and all are waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page, identifies the "Total Number of SSO locations" as 78, with 187,746 "Total Vol. of SSOs (gal)" discharged into the environment. Of this total volume, 94,167 gallons or just 50% are reported as being recovered while the City admits at least 58,791 gallons, or approximately 31% of the total, reached a surface water. This discharge poses both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 5 recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 827055, 823882, 823548, 814489, and 805790. All of the reported violations lack detailed information of the effects and explanation of spill. Examples of the alleged violations included in the list of CIWQS-reported SSOs are:

August 04, 2016 (Event ID# 827055) – an SSO estimated at 380 gallons occurred at 536 East University (Coordinates 34.19491 -118.31698). The cause of the spill was root intrusion. Of this amount, 300 gallons are reported as having been recovered, 330 gallons as reaching land, while 50 gallons are reported as reaching the Burbank Western Channel. For item "36 – Health Warnings posted" the City reports "No." For item "41 – Explanation of water quality samples analyzed for" the City, contradicting its report, states "Due to the limited amount of flow, the sewer spill did not reach receiving waters and was contained in the storm drain system."

April 14, 2016 (Event ID # 823882) – an SSO estimated at 4,684 gallons occurred at Beachwood and Riverside (Coordinates 34.15761 -118.31597). The City reports 4,684 gallons reached a surface water. The cause of the spill was a power outage due to winds. For item "36 – Health warnings posted," the City reported "No."

April 27, 2014 (Event ID # 805790) – an SSO estimated at 54,344 gallons occurred in the 400 block of North Beachwood Drive (Coordinates 34.174167 -118.323889). The cause of the spill is reported as an 18-inch force main rupture. Of the total estimated volume, 34,275

gallons are reported as reaching land, and 20,069 gallons are reported as reaching the Los Angeles River. For item “36 – Health warnings posted” the City reports “No.”

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. Further, as stated above, these alleged discharges are violations of the City’s NPDES Permit, Section III. Discharge Prohibitions. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

ii. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The City’s SSO Reports, which should reveal critical details about each of these SSOs (including which SSOs reach which specific surface water), lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch’s expert believes many of the SSOs reported as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. River Watch’s expert also believes that a careful reading of the time when the SSO began, the time the City received notification of the SSO, the time of its response, and the time at which the SSO ended, appear as unlikely estimations. Examples of the alleged violations included in this list of CIWQS-reported SSOs are:

October 14, 2016 (Event ID #823882) – the spill start time is reported as 11:15 pm, agency notification time is reported as 1:45 am the following day, operator arrival time as 2:10 am, and spill end time as 1:45 am. The report filed asserts the spill ended upon notification. The estimated total volume of spill is 4,684 gallons, all of which are reported as reaching the Los Angeles River.

March 30, 2016 (Event ID #823548) – the spill start time is reported as 8:36 am, agency notification time is reported as 8:43 am, while the operator arrival time is reported as 8:47 am. The spill end time is reported as 9:04 am. The estimated total volume of spill is 2,100 gallons, 500 of which are reported as recovered, while 500 gallons are reported as reaching land, and 1,600 are reported as having reached the Burbank Western Channel.

April 08, 2015 (Event ID #814489) – the spill start time and agency notification time are both reported as 8:07 am. The operator arrival time is reported as 8:21 am, and spill end time is reported as 8:22 am (1 minute after arrival). The estimated total volume of the spill, recovered amount, and amount having reached land are all reported as 1,734 gallons.

Given the inconsistent accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Without correctly reporting the spill start and notification times, and by inaccurately reporting the operator arrival time and spill end time, there is a danger that the duration and volume of a spill will be underestimated.

b. Failure to Warn

There is no indication that the City posts warning signs for any SSOs that presumably reach a surface water. River Watch contends the City is understating the significance of the impacts of its CWA violations by failing to post health warning signs for any SSOs which pose an imminent and substantial endangerment to health or the environment regardless of location.

iii. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of its SSOs. The City is a permittee under the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements* Order No. 2006-0003-DWQ (“Statewide WDR”) governing the operation of sanitary sewer systems. The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and impact of the release. As the City is inconsistently underestimating SSOs which reach surface waters, River Watch contends the City is not conducting samples on many SSOs as required by the Statewide WDR.

The EPA’s “*Report to Congress on the Impacts and Control of CSOs and SSOs*” (U.S. EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of the SSOs. Neighboring waterways include sensitive areas for the American White Pelican, Double Crested Cormorant, Osprey, Northern Harrier, Sharp-shinned Hawk, Merlin, California Gull, Vaux’s Swift, Loggerhead Shrike, Yellow Warble, Yellow-breasted Chat, Tri-colored Blackbird, Least Bittern, White-faced

Ibis, Golden Eagle, Prairie Falcon, Long-billed Curlew, Burrowing Owl, Vermillion Flycatcher, California Horned Lark, and Summer Tanager. River Watch finds no recent record of the City performing any analysis of the impact of SSOs on the habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies containing designated as critical habitat from the impacts of SSOs.

B. Failure to Eliminate Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system results in discharges to adjacent surface waters either directly or via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

River Watch contends untreated or partially treated sewage is discharged from the City's collection system either directly or via hydrologically-connected groundwater to surface waters including the Burbank Western Channel and the Los Angeles River, all which lead to the Pacific Ocean. Surface waters then become contaminated with pollutants, including human pathogens. Chronic failures in the collection system pose a substantial threat to public health. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found is a violation of the City's NPDES permit and thus a violation of the CWA.

C. Failure to Comply with the Municipal Separate Storm Sewer System (MS4) Stormwater Permit

The City's MS4 is a system of conveyances intended to carry stormwater. It is connected to storm drain pipes which discharge neighboring surface waters. However, SSOs bring sewage into the MS4 and in turn into waterways connected to, and downstream of, the MS4. River Watch contends the City fails to adequately comply with the discharge prohibitions of its MS4 Permit as stated above.

All SSOs which reach a storm drain or storm drain conveyance are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States, without complying with any other sections of the Act.

River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future. In addition, all of these discharges pose both a nuisance pursuant to California Water Code § 13050(m), and an imminent and substantial endangerment to human health and the environment.

D. Failure to Eliminate Unpermitted Discharges

Multiple sources of pollution generated through activities in the City, vehicular traffic, and sewage and garbage, make their way to the City's system of storm drains connected to the Los Angeles River and the Burbank Western Channel. Results from recent sampling tests indicate non-stormwater discharges of pollutants from the City's outfalls exceed water quality standards. River Watch's ongoing investigation indicates a lack of any structural Best Management Practices in place at these outfalls to prevent maintenance waters from coming into contact with pollutant sources and/or water treatment measures to prevent contaminants from being discharged without treatment in or around the storm drains. A map of the City's outfalls and photographs of the discharges River Watch addresses in this Supplemental Notice are attached as **Exhibit A**.

Under EPA regulations, water quality standard based provisions are required in NPDES permits to protect the beneficial uses of water. 40 C.F.R. § 122.44(d). The RWQCB-LA has identified beneficial uses of the Los Angeles River region's waters and has established water quality standards for the Los Angeles basin. The beneficial uses of these waters (discussed here and below) include, among others, contact and non-contact recreation. The non-contact recreation use is defined as use of water for recreational activities involving proximity to water, but not normally involving contact where water ingestion would be reasonably possible such as picnicking, sunbathing, hiking, camping, boating, hunting, sightseeing, or aesthetic enjoyment in conjunction with those activities. Water quality considerations relevant to hiking, camping, boating, and activities related to nature studies, require protection of habitats and aesthetic features.

The Basin Plan includes a narrative toxicity standard which states that all waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms. The Basin Plan includes a narrative oil and grease standard which states that waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses. The Basin Plan establishes Water Quality Objectives for toxic metals such as copper, nickel, and zinc.

The EPA adopted the National Toxics Rule on February 5, 1993 and the California Toxics Rule on May 18, 2000. When combined with the beneficial use designations in the Basin Plan, these Rules contain water quality standards applicable to the discharges of pollutants by the City identified in this Supplemental Notice. The SWRCB adopted the *Policy for Implementation of Toxics*

Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California on April 26, 2000, containing requirements for implementation of both the National Toxics Rule and California Toxics Rule.

E. Impacts to Beneficial Uses From SSOs and Direct Discharges

The aquatic environment of the Los Angeles River has numerous beneficial uses as set forth in the RWQCB-LA's Basin Plan including groundwater recharge, water contact recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, and rare, threatened, or endangered species. The Los Angeles River, Burbank Western Channel, and Pacific Ocean contain sensitive species and support important recreational value.

The Los Angeles River stretches approximately 51 miles from Canoga Park in the western end of the San Fernando Valley to Long Beach, southeast. Two channelized streams, Bell Creek and Arroyo Calabasas, come together in the Canoga Park section of Los Angeles at the head of the River which flows east past Burbank and curves around Griffith Park before flowing south to the Pacific Ocean at Long Beach.

The Los Angeles River watershed includes 3 regionally significant ecological areas: the Santa Monica Mountains, Verdugo Mountains, and Griffith Park. It is one of the largest watersheds in the region at 824 square miles.

The Los Angeles River was channelized by the Army Corps of Engineers beginning in 1938 after several devastating floods, providing flood control for the growing City of Los Angeles and a consistent path for the course of the River. Fed primarily by rainwater, snow melt, and urban discharge, the River is one of the few perennial rivers in Southern California. The concrete channel helps limit absorption of water into the earth. There has been flow every month since recording of the stream flow began in 1929, even the driest months. Although no native species of fish survived the channelization in 1938, the Los Angeles River is home to many fish species including common carp, largemouth bass, tilapia, Amazon Sailfin, channel catfish, fathead minnow, and crayfish.

Bird species of special concern relying on the Los Angeles River include the American White Pelican, Double Crested Cormorant, Osprey, red tailed hawk, Northern Harrier, Sharp-shinned Hawk, American coot, snowy, great egret, Merlin, great blue heron, California Gull, Vaux's Swift, Loggerhead Shrike, Yellow Warble, Yellow-breasted Chat, Tri-colored Blackbird, and the Mallard. More rarely seen species include the Least Bittern, White-faced Ibis, Golden Eagle, Prairie Falcon, Long-billed Curlew, Burrowing Owl, Vermillion Flycatcher, California Horned Lark, and Summer Tanager. Riparian habitat is impaired by degraded water quality resulting from increases in water temperature, sediment and nutrients, pesticides, and heavy metals.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Supplemental Notice is the City of Burbank as well as those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The violations alleged in this Supplemental Notice originate in the City and result in pollutants discharged by the City from its sewage collection system and outfalls (point sources within the City's jurisdiction) to the Los Angeles River and the Burbank Western Channel –both waters of the United States.

5. Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Supplemental Notice is June 13, 2013 through November 30, 2018. This Supplemental Notice also includes all violations of the CWA by the City which occur during and after this Supplemental Notice period up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this Supplemental Notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch has retained legal counsel with respect to the issues raised in this Supplemental Notice. All communications should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to continued conversations with staff for the City to tailor remedial measures for the City's sewer collection system and outfalls. In advance of these conversations, River Watch identifies the following issues for discussion that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. Determination of the specific sewer collection system repairs required, and establishing deadlines for compliance;
2. Implementation of an effective SSO reporting and response program (including revisions to the City's January, 2018 "SSO Emergency Response Plan");
3. Provision of a lateral inspection and repair program;
4. Ensuring the application of chemical root control complies with federal EPA or the RWQCB-LA as well as manufacturer and Cal-OSHA requirements;
5. Keeping the Sewer System Management Plan up-to-date and properly certified; and,
6. Promotion of staff training and education.

CONCLUSION

The violations set forth in this Supplemental Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the alleged violations of the CWA as set forth in this Supplemental Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4.

River Watch believes this Supplemental Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact counsel for River Watch within **20 days** after receipt of this Supplemental Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

Service List

Andrew Wheeler, Acting Administrator
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EXHIBIT A

This is a grayscale map of Hollywood, California, showing major roads, landmarks, and points of interest. The map includes the Hollywood Freeway (101), the Los Angeles River, and the Hollywood Hills. Key locations marked include Warner Bros. Studio Tour Hollywood, NBCUniversal, The Walt Disney Studios, and several cemeteries like Forest Lawn Hollywood Hills and Mt. Sinai Memorial Parks and Mortuaries. The map is credited to Google and includes a scale bar for 500 feet.

